

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

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Damon Mickeal Flagg,	:	Civil No. 1:24-cv-03374-ER-GS
	:	
	:	
Plaintiff,	:	<u>Motion for Attorney's Fees</u>
	:	<u>Pursuant to the Equal Access to Justice Act</u>
v.	:	28 U.S.C. §2412
	:	
	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

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COUNSEL:

PLEASE TAKE NOTICE that upon the annexed affidavit of Daniel Berger, attorney for the plaintiff, and the other papers, the plaintiff makes a motion before this Court, for an order:

1. Awarding attorney's fees plus costs in the sum of \$6,811.90 pursuant to the Equal Access to Justice Act; and
2. Granting such other and further relief as may be deemed just and proper.

Plaintiff, by and through his attorney, Daniel Berger, hereby moves the court to award attorney's fees to be paid by the defendant pursuant to the Equal Access to Justice Act, 28, USC §2412. Plaintiff asks for an award of attorney's fees in the amount of \$6,811.90 to be paid to plaintiff's attorney calculated at the rate of \$251.00 per hour for 26.9 hours of work performed, and \$100.00 per hour for 0.6 hours of work performed by paralegal on this case in Federal Court.

Plaintiff is entitled to receive attorney's fees pursuant to the Equal Access to Justice Act because he is the prevailing party in this action, is an individual whose net worth did not exceed two million dollars at the time the action was filed as is demonstrated by plaintiff's attached signed affidavit, IFP application, and the position of the United States in this litigation and at the agency was not substantially justified. Although the burden of proof on the issue of substantial justification is on the government, plaintiff's supporting memorandum briefly addresses this issue.

There are no special circumstances in this case which make an award under the EAJA unjust.

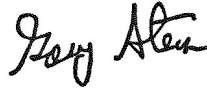
This motion is supported by the affidavit of plaintiff and the affidavit of plaintiff's attorney, memorandum, federal court retainer signed by plaintiff, and plaintiff's signed IFP application.

Dated at Bronx, NY this March 3, 2025

The parties are directed to meet and confer to discuss Plaintiff's motion for attorneys' fees. By no later than Wednesday, March 19, 2025, the Government shall respond to Plaintiff's motion identifying any areas of disagreement or, in lieu thereof, the parties shall submit a stipulation for allowance of fees by that deadline.

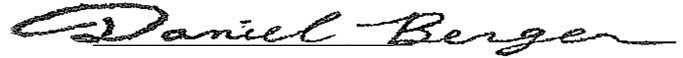
Date: March 5, 2025
New York, NY

SO ORDERED:



HON. GARY STEIN
UNITED STATES MAGISTRATE JUDGE

Respectfully submitted,



Daniel Berger

Attorney for Plaintiff

Law Office of Daniel Berger

1000 Grand Concourse, Suite 1A

Bronx, NY 10451

Damon Mickeal Flagg v. Commissioner of Social Security
Civil No. 1:24-cv-03374-ER-GS

DANIEL BERGER
ATTORNEY AT LAW
1000 Grand Concourse,
Bronx, New York 10451

PHONE (718) 588-4715
FAX (718) 588-7319

Damon Mickeal Flagg v. Commissioner of Social Security
Civil No. 1:24-cv-03374-ER-GS

Time Entry

03/11/2024: 1.6 hours. Review of Record; Attorney

Attorney reviewed case history, including client summary and medications, hearing notes, ALJ decision, Notice of Appeals Council Action, and exhibits of record.

Time Entry

03/22/2024: 0.0 hours. Call to client; Paralegal

Paralegal called client to inform client that attorney has reviewed case and decided to take case to Federal Court. Paralegal scheduled an appointment for client to sign necessary documents.

Time Entry

04/03/2024: 0.6 hours. Visit from client; Attorney

Client met with attorney and discussed Federal Court process. Client signed necessary papers to file civil action in Federal Court. Client had several questions regarding Federal Court, which attorney answered.

Time Entry

05/02/2024: 0.2 hours. Drafting; Attorney

Attorney drafted civil cover sheet, complaint, and summons to file civil action in Federal Court.

Time Entry

05/02/2024: 0.0 hours. Copies; Paralegal

Paralegal made required copies of documents drafted by attorney.

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Time Entry

05/02/2024: 0.5 hours. Filing on ECF; Paralegal

Paralegal filed Civil Action on ECF. Documents filed include Complaint, Civil Cover Sheet, IFP, and Summons.

Time Entry

05/06/2024: 0.0 hours. Review of Docket Sheet; Attorney

Attorney reviewed docket sheet including scheduling order and order granting IFP.

Time Entry

07/08/2024: 0.0 hours. Download of CAR and Review of Docket Sheet; Attorney

Attorney reviewed docket sheet, answer to complaint. Attorney downloaded Administrative Record.

Time Entry

07/08/2024: 0.1 hours. Call to client; Attorney

Attorney called client.

Time Entry

08/01/2024: 0.1 hours. Drafting and Filing; Attorney

After ARC Michael P. Corona consented, Attorney filed a request for a 61-day extension of time for the proposed briefing schedule.

Time Entry

09/26/2024: 5.7 hours. Review of file; Attorney

Review of file, hearing notes, certified administrative transcript, and record (603 pages).

Time Entry

09/27/2024: 6.8 hours. Drafting; Attorney

Attorney Prepared Statement of Facts. (12 pages, 5 footnotes)

Time Entry

Damon Mickeal Flagg v. Commissioner of Social Security
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09/29/2024: 8.6 hours. Drafting and Research; Attorney

Preparation of Memorandum of Law. Issues raised: The ALJ should have found Plaintiff disabled based on her psychiatric and physical impairments; The ALJ failed to consider all of Plaintiff's impairments and limitations; The VE's testimony did not constitute substantial evidence; The ALJ failed to develop the record.

Time Entry

09/30/2024: 0.5 hours. Review and Edit; Attorney

Edit Statement of Facts.

Time Entry

09/30/2024: 2.0 hours. Review and Edit; Attorney

Edit and Cite check Memorandum of Law, Shepardized cases, checked regulations, and created table of authorities.

Time Entry

09/30/2024: 0.1 hours. Draft Table of Contents; Paralegal

Paralegal drafted table of contents.

Time Entry

10/01/2024: 0.0 hours Filing ECF; Attorney

Attorney filed Motion for Judgment on the Pleadings and Memorandum of Law in Support via ECF.

Time Entry

10/01/2024: 0.1 hours. Call to client; Attorney

Attorney called client.

Time Entry

11/26/2024: 0.0 hours. Proposed Stipulation and Order; Attorney

After reviewing the Plaintiff's Motion for Judgment on the Pleadings and Memorandum of Law in Support, ARC Avni Dinesh Gandhi offered to remand this matter.

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Time Entry

12/03/2024: 0.0 hours. Review of Stipulation and Order; Attorney

Attorney reviewed Stipulation and Order signed by Hon. U.S. District Court Judge Edgardo Ramos on December 3, 2024.

Time Entry

12/03/2024: 0.3 hours. Call to client; Attorney

Attorney called client and informed client of remand. Attorney answered client's questions.

Time Entry

03/03/2025: 0.3 Hours. Preparation of EAJA Request; Attorney

Attorney prepared EAJA request.

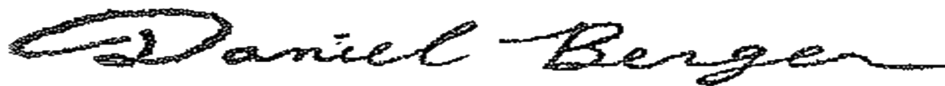
ATTORNEY HRS: 26.9 x \$251.00/HR = \$6,751.90

PARALEGAL HRS: 0.6 x \$100.00/HR = \$60.00

Total Hours: 27.5

TOTAL FOR LEGAL SERVICES RENDERED: \$6,811.90

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel Berger". The signature is written in a cursive, flowing style.

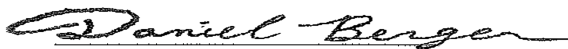
Daniel Berger, Esq.

FEDERAL COURT RETAINER AGREEMENT

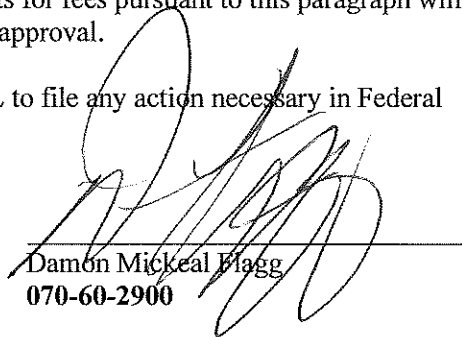
The following is an AGREEMENT made on 4/4/2024 Damon Miceal Flagg ("CLAIMANT") residing 2965 Marion Avenue, Apt. 5H Bronx, NY 10458 and Daniel Berger, ("COUNSEL")

This AGREEMENT specifies the Retainer relationship between the CLAIMANT(S) and the Attorneys for handling the claim for Social Security Disability benefits in Federal Court. It is agreed by the CLAIMANT that the Retainer shall be as follows:

1. If the litigation is successful, the CLAIMANT will pay 25% of the past due benefits. Under Social Security Regulations "past-due benefits" include such benefits payable to claimants and/or their families/dependents. Upon successful conclusion of Federal Court action, COUNSEL will move before the Federal Court for approval of a fee not to exceed 25% of retroactive benefits due to CLAIMANT.
2. CLAIMANT understands that if the amount approved by Federal Court is less than 25% of retroactive benefits then COUNSEL has the right to petition to the Social Security Administration for the balance, up to 25% of retroactive benefits for work performed at the Administrative level.
3. CLAIMANT agrees that COUNSEL is requesting direct payment of the EAJA fee approved by Federal Court.
4. In the event that the government erroneously releases the full retroactive amount to the CLAIMANT without withholding the attorney fee, the CLAIMANT understands that he/she will be responsible for immediately paying 25% of the total amount received (or the minimum fee, whichever is greater) to COUNSEL, to be held in escrow, pending receipt of the fee authorization from the Social Security Administration.
5. For the purposes of Section 406 of the Social Security DANIEL BERGER will be designated as the primary representative.
6. If the litigation is not successful, there will be no fee payable by the CLAIMANT to the law firm.
7. If the CLAIMANT discharges COUNSEL, and then his/her claim is successful, COUNSEL reserves the option to obtain fees for time spent handling CLAIMANT'S matter prior to discharge, on a *quantum meruit* basis. All such requests for fees pursuant to this paragraph will be submitted to the Social Security Administration for approval.
8. By signing below, CLAIMANT authorized COUNSEL to file any action necessary in Federal Court to further the claim for Disability.



DANIEL BERGER
Attorney for Plaintiff
1000 Grand Concourse, Suite 1A
Bronx, NY 1451



Damon Miceal Flagg
070-60-2900

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Damon Mickeal Flagg

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

CV () ()

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

Commissioner of Social Security

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☒ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☒ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☒ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? more than 10 years ago

Gross monthly wages at the time: does not remember

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment ☐ Yes ☒ No
(b) Rent payments, interest, or dividends ☒ Yes ☐ No

- | | | |
|---|---|--|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

Public Assistance (Rent) - \$215.00
 Food stamps - \$280.00
 \$90.00

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?
 Nothing
5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:
 NO
6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:
 NO
7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):
 NO
8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:
 NO

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

4/4/2024

Dated

Flagg, Damon Mickeal

Name (Last, First, MI)

2965 Marion Avenue, Apt. 5H Bronx

Address

City

Prison Identification # (if incarcerated)

NY

10458

State

Zip Code

Telephone Number

E-mail Address (if available)